

# Congress of the United States

Washington, DC 20515

February 6, 2004

## BY FACSIMILE

The Honorable Patrick Pizzella  
Assistant Secretary for Administration  
and Management  
Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Dear Mr. Pizzella:

This letter follows up on the January 28, 2004 joint hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Small Business Subcommittee on Regulatory Reform and Oversight, entitled "What is the Administration's Record in Relieving Burden on Small Business?" As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 and B-363 Rayburn House Office Building and the minority staff in B-350A and B-343C Rayburn House Office Building not later than March 1, 2004. If you have any questions about this request, please call Barbara Kahlow on 226-3058.

Thank you for your attention to this request.

Sincerely,

Doug Ose  
Chairman  
Subcommittee on Energy Policy, Natural  
Resources and Regulatory Affairs



Edward L. Schrock  
Chairman  
Subcommittee on Regulatory  
Reform and Oversight

Enclosure

cc The Honorable Tom Davis  
The Honorable John Tierney

The Honorable Donald A. Manzullo

Q1. Waiver/Reduction Policies for First-Time Violations by Small Business.

- a. What is your agency's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?
- b. Has your policy changed since the June 2002 enactment of the Small Business Paperwork Relief Act (SBPRA)? If so, how? If not, did your agency's policy change after the 1996 enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which required agencies to develop plans for waiving and/or reducing fines, as appropriate, on small business. If so, how? If not, why not?
- c. Does your agency have different policies for first-time violations by small business of **paperwork** requirements vs first-time violations by small business of **regulatory** requirements? If so, please explain.
- d. Does your agency track first-time violations by small business of either paperwork requirements or regulatory requirements or both? If not, will you begin to do so?

Q2. DOL Policies for Small Business.

- a. OSHA. The Occupational Safety and Health Administration (OSHA) reduced or waived 78 percent of all enforcement dollars reduced or waived by the various agencies within the Department of Labor (DOL) from October 1, 2002 to September 30, 2003: \$40.5 million of the \$51.6 million. DOL reported that 67 percent of OSHA's enforcement actions against small entities involved some reduction or waiver. What percent of these involved first-time violations? Does OSHA employ different criteria for small business? If so, please explain. If not, why not?
- b. MSHA. The Mine Safety and Health Administration (MSHA) took 47,150 enforcement actions against small entities – 72 percent of DOL's total – but DOL's report states, "MSHA is not authorized to waive civil penalties" (p. 2). What can DOL do to help small businesses in this area? Is a regulatory or statutory change needed? If so, will DOL seek such a change? If not, why not?

Q3. Enforcement Data Systems.

- a. SBPRA Implementation. When did your agency begin to adjust its existing data systems to collect the enforcement data required by the June 2002 SBPRA law to be initially reported to Congress on 12/31/03?
- b. DOL Systems for Enforcement Data. DOL's December 30, 2003 report states: (1) "for some agencies, there are no mechanisms to calculate reductions in civil penalties for small entities," (2) "OSHA's data collection system does not capture precisely what is being requested under the Act," and (3) "there may be differences with [OSHA's] reports issued under the authority of the Inspector General and Chief Financial Officer."

Why didn't DOL revise its data systems to be able to report the enforcement information statutorily required in the June 2002 law? Will DOL be doing so? If so, will the data be ready for the next enforcement report due December 31, 2004? And, will that report present data that are consistent with the data in the IG's Semi-Annual Reports and the CFO's annual financial statement? If not, why not?

Q4. Small Business Paperwork Reduction Initiatives.

- a. 5/22/95 PRA to Present. Your written testimony states, "DOL has decreased the paperwork burden ... in seven out of the eight years under the 1995 PRA, yielding a nearly 40 percent decrease. This decrease includes both program changes and adjustments" (p. 1). Since the 1980 enactment of the Paperwork Reduction Act (PRA), OMB has factored out adjustments, since they are not due to any agency action, in all claimed burden reduction accomplishments. As a consequence, what portion of DOL's 40 percent decrease figure is solely due to agency action (i.e., program increases or program decreases but not correction-errors, correction-reestimates, or changes in use)? Please provide details for each burden reduction accomplishment over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.
- b. 6/28/02 SBPRA to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (**exclusive of electronic filing**) were accomplished by your agency to benefit small businesses since the June 28, 2002 enactment of SBPRA, and what are planned in the rest of 2004?
  - i. How many of these initiatives reduce the frequency of small business reporting?
  - ii. How many introduce thresholds below which reporting is not required?
  - iii. How many raise thresholds to reduce reporting for more small businesses?
  - iv. How many introduce sampling instead of requiring universe reporting so fewer small businesses will need to report?
  - v. How many create short forms for small businesses?

- Q5. OSHA Recordkeeping Threshold. During and after the Ose Subcommittee's April 11, 2003 paperwork hearing, we asked OSHA Administrator John Henshaw, "In your testimony, you mention that employers with 10 or fewer employees are not required to compile injury-illness logs (p. 5). In its December 2003 enforcement report, DOL used 25 as the threshold for OSHA's small business enforcement actions and penalties. As a consequence, why can't DOL raise this threshold to 25 employees? If not, is DOL considering other reductions for small business in this burdensome requirement? If so, please describe them.